No. 79-1190

Supreme Court, U. S.
FILED
FEB 1 1980
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

JANUARY TERM, 1980

LA SALLE NATIONAL BANK as Trustee under Trust No. 21113, et al.

Petitioners,

vs.

PEOPLES GAS LIGHT & COKE COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

WILLIAM HENNING RUBIN
188 W. Randolph — 714
Chicago, Illinois 60602
(312) 263-6780
Attorney for Petitioners

LAW OFFICES OF:

WILLIAM HENNING RUBIN
188 W. Randolph — 714
Chicago, Illinois 60602
263-6780
Of Counsel

UNITED STATES LAW PRINTING CO., CHICAGO, ILLINOIS 60618 (312) 525-6581

INDEX

	PAGE
Order Below	2
Jurisdictional Statement	2
Question Presented	2
Statutory Provisions Involved	2
The Questions Are Substantial	3
Statement of the Case	4
Argument	8
Point One:	
Reasons For Granting A Writ Of Certiorari	8
Point Two:	
A Void Judgment Can Always Be Attacked: There Is No Statute Of Limitations And Respondents Cannot Use A Technicality To Avoid Setting Aside A Void Judgment	9
Point Three:	
The Ruling Below Conflicts With The Applicable Decisions Of This Court Holding That Liability Imposed Without Hearing Is Void And Unconstitutional	10
Point Four:	
Petitioner's Failure To Appeal Was Not A Failure To Exhaust The Remedies Available In The Courts Of The State, Which Would Preclude Federal Habeas Corpus Relief Under 28 U.S.C. 254	11

PAGE

Point Five:

The Supreme Court Of The United States Is Required To Exercise Supervisory Authority To Ensure Due Process 12

Conclusion 13

Appendix — Petition For Leave To Appeal .....App. 1

AUTHORITIES CITED

Aguilar v. Texas, 378 U.S. 100 12 L. Ed. 2d 723 11

Fay v. Noia, 372 U.S. 391, 9 L. Ed. 2d 837 .....6, 9, 11, 12

Giglio v. U.S., 405 U.S. 160, 31 L. Ed. 2d 104 92 S.Ct. 763 9

Giordenello v. U. S., 357 U.S. 480 at 487-488, 9 L. Ed. 2d 1503, 89 S.Ct. 1245 (1958) 11

Jones v. U. S., 362 U.S. 257, 4 L. Ed. 2d 697, 80 S.Ct. 725, 78 ALR 2d 233 (1960) 11

Mapp v. Ohio, 367 U.S. 643, 6 L. Ed. 2d 1081 12

Memphis Light & Gas Co. v. Willie W. Kraft, 98 S.Ct. 1554 (1978) 6

Napue v. Illinois, 360 U.S. 264, 3 L. Ed. 1217 8

Rugendorf v. U. S., 376 U.S. 528, 11 L. Ed. 2d 887 11

Spinelli v. U. S., 393 U.S. 410, 21 L. Ed. 2d 637, 78 S.Ct. 584 (1969) 10

U. S. v. Ventresca, 380 U.S. 102, 13 L. Ed. 2d 9, 85 S.Ct. 741 (1965) 10-11

Harold Whitely v. Warden of Wyoming State Penetentiary, 401 U.S. 560, 28 L. Ed. 2d 306 .....8, 10

OTHER AUTHORITIES

PAGE

United States Constitution

Amendment IV 2, 12

Amendment XIV 3, 12

Rules of the Supreme Court of Illinois, Rule 315 (a) (b) 1, 2, 3

U. S. Supreme Court Rule 19, 1-2 ..... 8, 5

28 U.S.C. Section 254 11

28 U.S.C. Section 1257, subsections 2 and 3 2

In the
Supreme Court of the United States

JANUARY TERM, 1980

NO.

LA SALLE NATIONAL BANK as Trustee under Trust No. 21113,

Petitioners,

VS.

PEOPLES GAS LIGHT & COKE COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS

PETITIONERS, LaSalle National Bank as Trustee under Trust No. 21113, the Managing Agent Coates-Miller, Inc., Brian K. Flisk an officer of the managing agent, Randolph Mortgage Corporation the mortgagee, and William Henning Rubin the registered agent and attorney for mortgagor, respectfully pray that a writ of certiorari issue to review the judgment of the Illinois Supreme Court denying the Petition for Leave to Appeal pursuant to Rule 315(a) (b) of the Rules of the Supreme Court of Illinois.

ORDER BELOW

The Order of the Illinois Supreme Court denying Petition for Leave to Appeal to the Supreme Court of Illinois pursuant to Rule 315 (a) (b) of the Rules of the Supreme Court of Illinois is as follows:

"Petition for Leave to Appeal to the Supreme Court of Illinois denied, October 1st 1979, and motion for reconsideration denied November 13, 1979."

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked pursuant to 28 U.S.C. Section 1257, Subsections 2 and 3.

Petitioner seeks certiorari to issue to the Supreme Court of Illinois requiring it to vacate its order denying "The Petition for Leave to Appeal to the Supreme Court of Illinois pursuant to Rule 315 (a) (b) of the Rules of the Supreme Court" which denied the right to appeal from the order of the Appellate Court of Illinois First District.

QUESTION PRESENTED

Can a void judgment—entered fraudulently by the Clerk of a Court, when there is no minute book of the Judge to confirm that a trial was had—be permitted to stand, in view of the challenge of lack of due process?

STATUTORY PROVISIONS INVOLVED UNITED STATES CONSTITUTION

AMENDMENT IV:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

AMENDMENT XIV:

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within the jurisdiction the equal protection of the laws."

THE QUESTIONS ARE SUBSTANTIAL

1. Can a mortgagee be held liable for the expenses of operation of a building?

2. Can a registered agent be held liable for the debts of a corporation?

3. Can a fraudulent void judgment that has never been entered by the judge and is not confirmed by the Judge's minute book reflecting that a trial was held and that witnesses testified, binding the defendants, remain in full force and effect?

4. Can a judgment falsely and fraudulently entered by the Clerk of the Court bind a defendant?

The record discloses the following manipulations of the Clerk in the courtroom with the file:

A. LaSalle National Bank as Trustee under Trust No. 21113 was dismissed as a party defendant by written order. The Clerk of the Court entered an order on the "half sheet" finding defendant LaSalle National Bank as trustee liable, when there was a court order exonerating the Bank;

B. The Honorable Michael Zlatnik had no Minute Book to confirm the names and addresses, if any, of witnesses that testified;

C. The plaintiff refused to produce the names of witnesses that testified that defendants were liable.

STATEMENT OF THE CASE

Respondent filed contract suit with a tort number against the LaSalle National Bank as Trustee under Trust Number 21113, the Managing Agent Coates-Miller, Inc., Brian K. Flisk an officer of the managing agent, Randolph Mortgage Corporation the mortgagee who was foreclosing a first mortgage and was mortgagee in possession pursuant to an assignment of rents, and William Henning Rubin the Registered Agent and attorney for the mortgagor, for a gas bill covering gas used to heat the premises.

None of these persons or corporations can be held liable since they were not customers of the Gas Company.

The beneficiary of LaSalle National Bank as Trustee, was incarcerated in the federal penitentiary, and obviously was unable to make his mortgage payments and this resulted in the mortgage foreclosure, nor did he pay the gas bill.

None of the Defendants were customers of the Gas Company, and were not beneficiaries of the Trust, nor was the Registered Agent.

A motion was made to strike and dismiss the Complaint on that basis. The matter could never be heard since each time the case came up the file was missing.

An order was entered as a result of manipulation by the Clerk of that Court, who falsely and fraudulently entered a judgment order against each of the defendants.

There is no record of a trial in the Judge's Minute Book. This bolsters the contention of Petitioners that a fraud was perpetrated.

The trial judge had no independent recollection of having heard the case, or any evidence in connection therewith.

Petitioner's contention is bolstered by the fact that Respondents filed a "contract action" with a tort number to conceal the fact that in the event the judgment was not paid that they may seek other sanctions.

The fact that no trial was held on the merits, and the clerk of the court fraudulently entered a judgment on what is known as the half sheet,[1] does not reflect that a trial was ever held in this cause.

That since the presiding judge of the Municipal Court, the Honorable Michael Zlatnik, has no minute book reflecting that a trial was ever had, and that witnesses testified concerning the liability of any of the defendants, we must assume that no trial was held.

That in addition thereto, the Complaint is verified by an *attorney for the corporation* whose knowledge is strictly hearsay since he had no personal knowledge of any of the transactions.

That since the judgment was entered ex parte, the Complaint cannot be accepted as "true" based on the affidavit of the attorney on behalf of the corporation, since no competent witnesses testified.

It is essential that certiorari be granted since it meets the requirements of the Supreme Court's Rule 19.

The Clerk of the Court caused a judgment to be entered against the mortgagee, an officer of the managing company, managing the property, and the registered agent of the

---

[1] A half sheet is a piece of paper in the courtroom which has listed thereon the name of the case, the number of the case, the names of lawyers and individuals involved in the court action, to eliminate the necessity of having to write a court order every time a motion is made and a decision is made by the court. The courts have held that half sheets are not indicative of the court's ruling.

mortgage company, none of which were customers of the Gas Company.

That no state in the union has any law on its books that a mortgagee is liable for the debts of the mortgagor.

That William Henning Rubin is the registered agent of Randolph Mortgage Corporation and its attorney that was foreclosing the mortgage. He had no personal interest in the property which was being foreclosed.

A motion to strike and dismiss the Complaint filed in the trial court sets forth that the mortgagee had no interest in the property as well as the registered agent, and managing agent of the corporation. That neither the corporation nor the officer of the managing agent, nor the registered agent or attorney were customers of the Gas Company; and they had no obligation to the Gas Company for any sum whatsoever, was set forth in the Motion to Strike and Dismiss.

The judgment in this case seeks to extend the "line of liability" for persons or corporations who have never been held liable for the "use of property"[2] in a mortgage foreclosure.

It is essential that this Court grant certiorari in order that Petitioners who have no personal liability can obtain due process, and be released from a void judgment where they never had an opportunity to contest the proceedings since the file was always missing from the courtroom.

See *Fay* v. *Noia,* 372 U.S. 391, 9 L. Ed. 2d 837.

The fraudulent entry by the Clerk of the Order of Judgment is confirmed by the fact that LaSalle National Bank as Trustee, pursuant to a draft order was dismissed

[2] Memphis Light & Gas Company v. Willie W. Kraft, 98 S.Ct. 1554 (1978).

from the proceedings as a defendant, and the Clerk of the Court subsequently entered a judgment as though it had first been entered against the trustee. This further confirms the *fact that it was a deliberate attempt on the part of the Clerk of the Court to cause a fraudulent void judgment to be entered.*

The facts as set forth reflect that each time the Defendant appeared in court the file was always missing.

The trial court judge was requested to spread of record the names of the witnesses that testified and the nature of the testimony and Plaintiff refused.

The judge said he was *unable to do this since he had no minute book and had no record of a trial.* The entire procedure was a fraudulent entry of a judgment by the Clerk of the Courtroom.

The Illinois Appellate Courts have held that an order on a half sheet is not a valid order.

The fact that the judge had no independent recollection of the hearing, was evidence of the fradulent entry of a judgment by the Clerk of the Court.

ARGUMENT

POINT ONE

REASONS FOR GRANTING A WRIT OF CERTIORARI

The instant case meets the requirements for review by this Court so set forth in Supreme Court Rule 19, 1-2.

First, the ruling below is not in accord with any statute making a mortgagee or a registered agent, or a mortgagor or a registered agent or a corporation or a attorney liable for debts incurred during a period of a mortgage foreclosure.

Secondly, there is no court record of any witnesses testifying as to the liability of any of the defendants—namely a mortgagee or a registered agent or its attorney—where neither contracted for the use of gas in an apartment building in foreclosure.

Thirdly, the presiding judge at the trial has no record of having heard any evidence or testimony of any witnesses or even having entered a judgment except that the half sheet discloses the entry of a judgment.

Fourth, the plaintiff refused to produce a list of witnesses that testified (None testified).

The state courts have determined that the entry of a half sheet item in a court file is not evidence of the valid entry of a judgment.

It is the contention of the Petitioners that, in accordance with the decision of the United States Supreme Court in *Napue* v. *Illinois,* 360 U.S. 264, 3 L. Ed. 1217. This Court is required to reverse the decision of the Municipal

Court of Chicago Circuit Court, based on the fradulent entry of judgment against these petitioners without a trial.

This contention is also supported by: *Whitely* v. *Wyoming,* 401 U.S. 560, 28 L. Ed. 2d 306.

POINT TWO

A VOID JUDGMENT CAN ALWAYS BE ATTACKED: THERE IS NO STATUTE OF LIMITATIONS AND RESPONDENTS CANNOT USE A TECHNICALITY TO AVOID SETTING ASIDE A VOID JUDGMENT.

The Supreme Court of the United States in *Giglio* v. *U. S.,* 405 U.S. 160, 31 L. Ed. 2d 104, 92 S.Ct. 763, held:

> "A new trial is required if the false testimony could have in reasonable likelihood affected the judgment of the jury."

That situation is similar here, where the Complaint alleges a breach of contract, using a tort number.

In *Fay* v. *Noia,* 382 U.S. 391, 9 L. Ed. 2d 837, 83 S.Ct. 822, the Supreme Court held that where there is a denial of Due Process the individual is entitled to his immediate release.

There is no question in the case at bar, that the examination of the record reflects the entry of a false order finding the Defendants guilty when there is no record in any judge's minute book to confirm the testimony that the defendants-petitioners were guilty.

That in such instance, the Court is required of its own motion to decide whether or not a fraud had been perpetrated on the court, and not to accept as a subsequent judge did of a communication purportedly sent to the at-

torneys of the petitioners, that a judgment had been entered, when in fact no such communication was ever proven.

The Rules of Procedure, the Civil Practice Act, and the Rules of the Supreme Court specifically provide that when a judge is not sitting, any other judge sitting in his "place of stead" has a right to rule on a motion or petition submitted in that courtroom. It is a well known fact that the Chief Justice of the Municipal Court, several years ago, sent a communication to all of the judges that any decision rendered is not a decision of the judge but is a decision of the courtroom so that a subsequent judge sitting in his place and stead has jurisdiction to rule on a motion or petition presented in any given case.

POINT THREE

THE RULING BELOW CONFLICTS WITH THE APPLICABLE DECISIONS OF THIS COURT HOLDING THAT LIABILITY IMPOSED WITHOUT HEARING IS VOID AND UNCONSTITUTIONAL.

The case of *Harold Whitely, Petitioner* v. *Warden of Wyoming State Penetentiary,* 401 U.S. 560, 28 L. Ed. 2d 306, is in point.

The decision of this Court in the *Whitely* case which sets forth that the judicial officer issuing a search warrant be supplied with sufficient information to support an independent judgment that probable cause exists for the warrant, is the same principal upon which a void judgment cannot be entertained.

The *Whitely* case cites the following cases: *Spinelli* v. *United States,* 393 U.S. 410, 21 L. Ed. 2d 637, 78 S.Ct. 584 (1969); *United States* v. *Ventresca,* 380 U.S. 102, 13

L. Ed. 2d 684, 85 S.Ct. 741 (1965); *Aguilar* v. *Texas,* 378 U.S. 100, 12 L. Ed. 2d 723, 84 S.Ct. 1509 (1964).

POINT FOUR

PETITIONER'S FAILURE TO APPEAL WAS NOT A FAILURE TO EXHAUST THE REMEDIES AVAILABLE IN THE COURTS OF THE STATE, WHICH WOULD PRECLUDE FEDERAL HABEAS CORPUS RELIEF UNDER 28 U.S.C. 254.

The Petitioners in this cause exhausted all of their state remedies by filing a petition for leave to appeal to the Supreme Court of Illinois.

The case of: *Fay* v. *Noia,* 372 U.S. 391, 9 L Ed 2d 837. further supports Petitioners and stands for the proposition that:

> "The Petitioner's failure to appeal was not a failure to exhaust 'the remedies available in the courts of the State'."

Just as it has been held not to be a waiver to file a federal petition for a writ of habeas corpus so it is not a defense that defendants have not exhausted their remedies in the state court.

Rugendorf v. *United States,* 376 US 528, 11 L Ed 2d 887, 84 S Ct 825. (1964):
Jones v. *United States,* 362 US 257, 4 L Ed 2d 697, 80 S Ct 725, 78 ALR 2d 233 (1960);

Giordenello v. *United States,* 357 US 480, 1 L Ed 2d 1503, 89 S Ct 1245 (1958).

In order for the judgment of a court of law to have any binding effect, there must be some type of testimony and documents to support the court's judgment.

The Complaint filed in this case could not support a finding against the mortgagee, the managing agent, or the registered agent of the corporation, therefore the judgment order against the defendants violates the constitutional rights of the defendants under the Fourth and Fourteenth Amendments to the Constitution.

In the case of *Mapp* v. *Ohio*, 367 US 643, 6 L Ed 2d 1081, the Court held that the evidence should be excluded. In the instant case *there was no evidence adduced,* and so the entry of a judgment order is void.

POINT FIVE

THE SUPREME COURT OF THE UNITED STATES IS REQUIRED TO EXERCISE SUPERVISORY AUTHORITY TO ENSURE DUE PROCESS.

The State courts should not be permitted to defeat due process and justice on the basis of a technicality such as was permitted in the case at bar when the file was never available and each time that the case was called, and when the file was discovered it was found that the Clerk of the Court had fraudulently and without judicial authority entered a void judgment since no hearing was had, no evidence was produced that was confirmed by the minute book of a judge. The only thing available was an entry in the docket book of a judgment with no supporting evidence that such entry was duly authorized by a court of competent jurisdiction. Such injustices must be eliminated by the Supreme Court of the United States. This is confirmed by the decision of the Supreme Court in: *Fay* v. *Noia, ibid.*

CONCLUSION

The case presents a critical issue on the technicalities which are being used in the state courts to sustain void judgment and it is encumbent upon this Court to clarify the jurisdiction of both the state courts and the federal courts, not to defeat justice on a technicality.

For the foregoing reasons, Petitioners pray that this Court issue a writ of certiorari to the Supreme Court of Illinois for the purpose of reviewing and reversing the decision of that court in denying the petition for leave to appeal the order of the Circuit Court of Cook County Municipal Division denying vacation of the judgment against the defendants in the aforementioned case.

Respectfully submitted,

WILLIAM HENNING RUBIN
Attorney for Petitioners

Law Offices of:
WILLIAM HENNING RUBIN
188 W. Randolph—714
Chicago, Illinois 60602
263-6780

APPENDIX

PETITION FOR LEAVE TO APPEAL
INDEX and REFERENCES

PAGE

Point One:

That This Case Demands The Utmost Attention Of This Court (Lest) The Following Results Occur To Established Law In State Of Illinois App. 2

See points 4 thru 14, pages .....App. 2-4

Point Two:

That It Is Established Law That A Void Judgment Can Always Be Set Aside .....App. 4

Jordan v. Gilligan, 500 F. 2d 701 .....App. 4

Safeway Inc. v. Harvey, 36 Ill. App. 3d 388, 392 (1976) .....App. 4

Regals v. Reagan, 22 Ill. App. 3d 211 .....App. 4

James v. Fratz, 21 Ill. 2d 377 .....App. 4

Chapman Mazza v. Ace Link, 83 Ill. App. 3d, 320 (1967) .....App. 4

Barnard v. Michael, 392 Ill. 130 (1945) .....App. 4

Krieger v. Krieger, 221 Ill. 479, 484 .....App. 4

Miller v. Bloomberg, 60 Ill. App. 3d 362, 365 .....App. 4

Point Three:

PAGE

That The Practice Of Law Is Not A Guessing Game: But It Is Precise .....App. 5

See pages 6, 7.

Barnard v. Michael (1945) ibid .....App. 5

Maher v. Title Guarantee & Tr. Co., (1901), 95 Ill. App. 365, 387 .....App. 5

Point Four:

There Is Need For The Exercise Of The Supreme Court's Supervisory Authority In This Case .....App. 6-7

APPENDIX

TO THE SUPREME COURT OF ILLINOIS

APPEAL FROM THE:

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

PEOPLES GAS LIGHT & COKE COMPANY
Plaintiff-Appellee

VS

LA SALLE NATIONAL BANK as Trustee under Trust No. 21113, et al,
Defendants-Appellants

Appellate Number 79-857

PETITION FOR LEAVE TO APPEAL TO THE SUPREME COURT OF ILLINOIS PURSUANT TO RULE 315 (a) (b) OF THE

RULES OF THE SUPREME COURT OF ILLINOIS

TO THE HONORABLE JUDGES OF THE SUPREME COURT OF ILLINOIS:

PETITIONER, WILLIAM HENNING RUBIN, attorney for LA SALLE NATIONAL BANK as Trustee under Trust No. 21113 et al, files this Petition for Leave to Appeal, pursuant to Rule 315 (a) (b) of the Rules of the Supreme Court of Illinois.

1. Petitoners pray that the action of the trial court finding the defendants personally liable for payment of the gas bill be reversed and that the action of the Appellate Court of Illinois First District in dismissing the appeal be reversed.

2. That the decision of the trial court is a forgery and unsupported by any minute book of the judge reflecting that witnesses testified that the defendants were personally liable, and that the court pursuant to said testimony found the defendants were liable to the plaintiff.

3. That the devision of the Appellate Court First District is completely erroneous since the complaint is unverified, the defendants had no knowledge of the entry of the void order, since there never was a hearing, and no witnesses testified.

4. *That this case demands the utmost attention of this Court for,* if the dismissal is allowed to stand in this instance, *the following results will occur to established law in the State of Illinois*:

5. In the opinion of Petitioner, the following results will occur:

a) It will mean that a mortgagee can be held liable for the expenses of operation of a building;

b) It will mean that a registered agent is liable for the debts of a corporation;

c) It will mean that a void judgment which was never entered by the Judge and is not confirmed by the Judge's minute book, is in full force and effect;

d) It will mean that because the Clerk of the Court falsely entered an order finding these defendants liable including employees of a real estate management company, it is a valid order.

6. The record discloses the following manipulations of the Clerk in the courtroom:

A. LaSalle National Bank as Trustee under Trust Number 21113 was dismissed as a party defendant by written order. The Clerk of the Court entered an order on the 'Halfsheet'' finding Defendant

LaSalle National Bank as trustee liable, when there was a court order exhonerating the Bank.

B. The Honorable Michael Zlatnik had no Minute Book to confirm the names and addresses, if any, of witnesses that testified;

C. The plaintiff refused to produce the names of witnesses that testified that defendants were liable.

7. Under the law of the State of Illinois, there is no case confirming that a mortgagee can be held liable for the debts of a mortgagor.

8. The case law requires that an agent, whose agency has been disclosed, is exempt from any personal liability.

9. There is no case law in the State of Illinois that makes a registered agent liable.

10. The *manipulations* of the plaintiff *are disclosed* and apparent by the fact that *the suit is a tort, when it is a contract case.*

11. The record discloses that the mortgagee had filed a mortgage foreclosure to divest the interest of the LaSalle National Bank.

12. That since the Complaint is completely invalid, there can be no proof adduced by defendants since no one testified;

13. That the record further discloses that each and *every time that the case came up the file was missing;* and the *manipulations of the Clerk of the Court on the half sheet* are not conclusive in view of the contrary affidavits of the defendants.

14. That this Court is called upon to lay down rules and regulations as to the obligations of a judge in a courtroom; that it is his duty to supervise the entry of the orders

on the half sheet and on the docket, and the judge cannot exhonerate himself from liability by passing this responsibility to the Clerk.

15. *That it is established law that a void judgment can always be set aside.* For example, see: *Jordan* v. *Gilligan,* 500 F 2d 701.

16. That the Supreme Court of Illinois has rendered many similar decisions, that a void judgment can always be attacked.

17. That the Illinois cases supporting the proposition that *a void decree may be attacked at any time by any party that is affected thereby* are:

Safeway, Inc. v. *Harvey,* 36 Ill. App. 3d 388, 392;
Regals v. *Reagan,* 22 Ill. App. 3d, 211;
James v. *Fratz,* 21 Ill. 2d 377;
Chapman Mazza v. *Ace Link,* 83 Ill. App. 3d, 320.
Barnard v. *Michael,* 392 Ill. 130;
Krieger v. *Krieger,* 221 Ill. 479, 484.

The Court said, in the *Safeway* v. *Harvey,* (1976) case, *ibid*:

> "It is established law that a void decree may be attacked at any time by the parties themselves or by any person who is affected thereby."

In *Reagan* v. *Reagan,* (1971), *ibid,* the opinion states:

> "That the two year period provided in Sec. 72 for bringing an action is not applicable where relief is sought from a void decree." *Miller* v. *Bloomberg,* 60 Ill. App. 3d 362, 365. Chapman Mazza (1967), *ibid;*

That the *Miller* v. *Bloomburg* case stands for the proposition that:

> "A trial court on its own motion may set aside any judgment or order during the pendancy of the term or its equivalent."

Defendants-Appellants contend that when the Honorable Michael Zlatnik saw that he had no "Minute Book" containing the names and addresses of the witnesses that testified that the mortgagee Randolph Mortgage Corporation and William Henning Rubin registered agent, and the mortgage corporation were liable; and that even if witnesses were to testify that the mortgagee and registered agent were liable, it would be false and untrue and contrary to the established law, he should have vacated the judgment since it was void *ab initio.*

That it has always been the law that a void judgment cannot be made valid because someone falsely testified when there is no legal obligation to bind the party.

That the practice of law is not a guessing game; but it is precise; and until the judges learn to be precise in their rulings and that the rulings are founded on well established facts and honest testimony, we cannot have a true and accurate result.

The Court stated in the case of *Barnard* v. *Michael,* (1945) ibid:

> "A judgment or order or decree entered by a court which lacks jurisdiction . . . is void, and may be attacked at any time or in any court, either directly or collaterally. An application to vacate a judgment or decree, made to the court that rendered it within thirty days after its entry, is a direct attack upon the judgment or decree, but if made after the expiration of thirty days, it is a collateral attack." In *Maher* v. *Title Guarantee & Trust Co.* (1901) 95 Ill. App. 365, 387, it was stated: ". . . while courts of equity have the power to vacate a fraudulent divorce, though in so doing the rights of innocent third parties will be sacrificed, they will proceed with great caution, especially where there has been a second marriage on the faith of the fradulent decree . . ."

That a motion was made in the Appellate Court that an evidentiary hearing be held to determine the validity of the entry of the order by the Clerk so that there would be no question as to whether or not the order of judgment was a forgery, or was an honest entry.

That motion for the evidentiary hearing was denied by the Appellate Court, and justice requires that that order be reversed.

THERE IS NEED FOR THE EXERCISE OF THE SUPREME COURT'S SUPERVISORY AUTHORITY IN THIS CASE.

The Appellate Court dismissed the appeal without writing any opinion, with the result, as hereinabove stated, that the mortgagee in future cases can be held liable for the debts of the mortgagor, a registered agent of a corporation can be held liable for the debts of the corporation, an agent who has disclosed his agency can be held liable for the debts of the principal for whom he has managed property.

Under these circumstances, this Court is required in the interests of justice, to review the acts of the trial court, as well as the Appellate Court, which is acting under a technicality, that an appeal was not filed within the period provided in the Practice Act, or in the Rules of the Supreme Court.

The obligation to file a notice of appeal does not run until the parties litigant become conscious of an illegal act that has been committed either by the litigants or by the Clerk of the Court.

Certainly any litigant cannot take advantage of this type of defense or justice fails to exist in the United States of America.

There is no question that the Court's jurisdiction can be invoked by a Section 72 petition or when the party litigant ascertains that "fraud" has been exercised.

There is no question that the letter that the plaintiff appellee claims was sent, notifying the defendants of the entry of the judgment, is a fraud.

This Court cannot condone the entry of a judgment which purports to represent that a trial was held, when there actually was no trial.

That it is quite apparent that if a trial was held the plaintiff would have no hesitancy in disclosing the names and addresses of the witnesses that testified.

That to compound the injustice and injury that occurred to the Defendants-Appellants is the fact that no witness could have testified that the mortgagee is liable, nor could the witness testify that the registered agent was liable, nor could any witness testify that "an agent who discloses his agency" is liable.

To permit the decision of the Appellate Court to stand dismissing the appeal, under the circumstances when there was no disclosure that a judgment was entered until after the 30-day period had expired, *is the grossest mis-carriage of justice, which cannot be condoned by this Court.*

It is respectfully submitted that, in the interests of justice the appeal be reinstated, and this Court in the alternative remand the case to the Appellate Court for determination on the merits; or in the alternative, that this Court take jurisdiction and hold a complete hearing of the matters involved.

Respectfully submitted,

WILLIAM HENNING RUBIN
Attorney for
RANDOLPH MORTGAGE CORP., ET AL,
Defendants-Appellants

WILLIAM HENNING RUBIN
188 W. Randolph—714
Chicago, Illinois 60602
263-6780